



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201211031

DEC 21 2011

U.I.L. 402.08-00

XXXXXXXXXXXXXXXXXXXXX.  
XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX

T.E.P. RA. T3

Legend:

Taxpayer A	= XXXXXXXXXXXXXXXXXXXXXXXX
Plan X	= XXXXXXXXXXXXXXXXXXXXXXXX
Plan Y	= XXXXXXXXXXXXXXXXXXXXXXXX
Trustee T	= XXXXXXXXXXXXXXXXXXXXXXXX
Employer K	= XXXXXXXXXXXXXXXXXXXXXXXX
Company S	= XXXXXXXXXXXXXXXXXXXXXXXX
Amount D	= XXXXXXXXXXXXXXXXXXXXXXXX
Company C	= XXXXXXXXXXXXXXXXXXXXXXXX
Individual M	= XXXXXXXXXXXXXXXXXXXXXXXX
Date 1	= XXXXXXXXXXXXXXXXXXXXXXXX
Date 2	= XXXXXXXXXXXXXXXXXXXXXXXX
Date 3	= XXXXXXXXXXXXXXXXXXXXXXXX
Date 4	= XXXXXXXXXXXXXXXXXXXXXXXX

Dear xxxxxxxx:

This is in response to a request you submitted on xxxxxxxx, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A asserts that his failure to accomplish a rollover of Amount D from Plan X within the 60-day period prescribed by section 402(c)(3) of the Code was due to Company C's error in failing to process this rollover request because Company C misfiled his rollover papers. Taxpayer A asserts that his intent was to complete a direct rollover of Amount D to an eligible retirement plan of Company C.

Taxpayer A, age      is an employee of Employer K, a wholly owned subsidiary of Company C, which is a participating employer in Company C's Plan Y. Taxpayer A worked for Company S before becoming an employee of Employer K and participated in Plan X.

Taxpayer A represents that following the termination of his employment with Employer K, he attempted to initiate a direct rollover of his interest in Plan X to Plan Y. Taxpayer A further represents that on Date 1, the administrator of Plan X issued a lump sum distribution of his entire interest in Plan X in the form of a check payable to Taxpayer A and mailed the check to Individual M, a member of the human resources department of Company C.

Individual M was unable to transfer the check to Trustee T because it was made payable to Taxpayer A. On Date 2, Taxpayer A received the check from Individual M and on Date 3 Taxpayer A deposited the check into his personal account and initiated a rollover contribution to Company C by acquiring a cashier's check in the amount of Amount D payable to Trustee T. Trustee T returned the check to Taxpayer A because it was not accompanied by the necessary paperwork and Trustee T was not sure where the contribution was supposed to be deposited.

On Date 4, Taxpayer A returned the completed rollover paperwork required by Company C and delivered them with a cashier's check payable to Trustee T, but Company C did not process the rollover within the 60-day period because the rollover papers were misfiled by Company C's personnel.

Taxpayer A did every thing necessary to effect the desired rollover contribution to Plan Y and assumed that the rollover had been completed. Taxpayer A did not

know about the failed rollover until February of 2010, at which time it was finally transmitted to Company C's corporate office for processing.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement contained in section 402(c)(3) of the Code with respect to the distribution of Amount D.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be included in gross income for the taxable year in which paid. Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 401(a)(31) provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31) of the Income Tax Regulations, Question and Answer-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted is consistent with your

assertion that your failure to accomplish a timely rollover of Amount D was caused by Company C's error in failing to process your rollover request.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D. You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount D into another qualified plan. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount D will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact xxxxxxxxxxx, xxxxxxxxxxxx SE:T:EP:RA:T3, at xxxxxxxxxxxxxxxx.

Sincerely yours,



Laura B. Warshawsky, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of letter ruling  
Notice of Intention to Disclose